UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/563,199	09/01/2006	John Brownlie	ERP02.001APC1	6472

20995 7590 07/05/2007

KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER	
ARCHIE, NINA	

ART UNIT	PAPER NUMBER
1645	

NOTIFICATION DATE	DELIVERY MODE
07/05/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary	Application No.	Applicant(s)	
	10/563,199	BROWNLIE ET AL	
	Examiner	Art Unit	
	Nina A. Archie	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 January 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-55* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-55* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-15, 40-42, drawn to a vaccine composition for vaccinating dogs.

Group II, claim(s) 16-19, drawn to a method of vaccinating, a method of treating, and a method of stimulating an immune response.

Group III, claim(s) 29-30, drawn to a method of making an antibody.

Group IV, claim(s) 32-34 and 55, drawn to a method of passively immunizing and method of treating.

Group V, claim(s) 43, 44 and 50-51, drawn to a method of determining whether a dog has been exposed to a Ch*lamydophila* species.

Group VI, claim(s) 45-51, drawn to a method of determining whether a dog has or susceptible.

Group VII, claim(s) 52-53, drawn to an immunosorbent assay, a solid phase coated with any one or more of an agent capable of raising an immune response.

Group VIII, claim(s) 31, 38-39, drawn to an antibody and a composition.

The inventions listed as Groups I-VII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

1. The technical feature of Group I is a vaccine composition comprising an agent capable of raising an immune response against S. zooepidemicus. The technical feature is anticipated by Brown et al US Patent No. 5,583,014. Brown et al teaches a vaccine composition comprising an agent capable of raising an immune response against S. zooepidemicus (see patent in its entirety).

2. Group II is a method of use of the technical feature in Group I, a vaccine composition comprising an agent capable of raising an immune response.

3. Group III is a method of use of the technical feature in Group VIII, an antibody and a composition comprising any two or more of an antibody.

4. Group IV is a method of use of the technical feature in Group VIII, an antibody and a composition comprising any two or more of an antibody.

5. Group V is a method of use of the technical feature in Group VIII, an antibody and a composition comprising any two or more of an antibody.

6. Group VI is a method of use of the technical feature in Group VIII, an antibody and a composition comprising any two or more of an antibody.

7. The technical feature of Group VII is an immunosorbent assay.

8. The technical feature of Group VIII is an antibody and a composition.

Organism/Agent Election Requirement Applicable to Group I, Group II, Group III, Group IV, and Group VII

In addition, each Group detailed above, read on patentably distinct vaccine composition comprising immunogenic agents. Each are patentably distinct because they can include different antigens which have different characteristics and further restriction is applied to each Group.

For Group I and Group II choose a single organism or specific combination.

For Group IV choose a single organism or specific combination from claims 31 and 34.

1. *Streptococcus equi sub species zooepidemicus (S. zooepidemicus);*
2. *Mycoplasma cynos;*
3. *Chlamydophila;*
4. *Bordetella bronchiseptica;*
5. CRCV;
6. CPIV;
7. CHV;
8. CAV-2;

For Group III, choose a single organism or specific combination

1. *Streptococcus equi sub species zooepidemicus (S. zooepidemicus);*
2. *Mycoplasma cynos;*
3. *Chlamydophila;*
4. *Bordetella bronchiseptica;*

For Group VII, choose a single organism or specific combination

1. *Streptococcus equi sub species zooepidemicus (S. zooepidemicus);*
2. *Mycoplasma cynos;*
3. *Chlamydophila;*

Applicant is advised that examination will be restricted to only the elected vaccine composition comprising organism/agent and should not be construed as a species election.

Whole Organism, Fragment, and Nucleic acid Election Requirement to Groups I and Group II

In addition, Groups I detailed above, read on patentably distinct nucleic acids. Each vaccine composition comprising a whole organism, fragment, or nucleic acid nucleic acid is patentably distinct because they are structurally different and have different characteristics a further restriction is applied to each Group.

For Group I and Group II, choose a single organism or specific combination (i.e. whole organism, fragment, or nucleic acid)

1. A vaccine composition for vaccinating dogs of S. zooepidemicus.
2. A vaccine composition for vaccinating dogs of *M. cynos.*
3. A vaccine composition for vaccinating dogs of *Chlamydophila abortus.*
4. A vaccine composition for vaccinating dogs of *Chlamydophila psittaci.*
5. A vaccine composition for vaccinating dogs of *Chlamydophila fells.*
6. A vaccine composition for vaccinating dogs of *Chlamydia muridarum.*
7. A vaccine composition for vaccinating dogs of *Chlamydyia pecorum.*
8. A vaccine composition for vaccinating dogs of *Chlamydia pneumoniae.*

9. A vaccine composition for vaccinating dogs of *Chlamydia suis.*

10. A vaccine composition for vaccinating dogs of *Chlamydia trachomatis.*

11. A vaccine composition for vaccinating dogs of *Bordetella bronchiseptica.*

Applicant is advised that examination will be restricted to only the elected vaccine composition comprising a whole organism, fragment, or nucleic acid encoding or derivative of should not be construed as a species election.

Antibody Election Requirement to Group V, Group VI, and Group VIII

In addition, Group V and Group VI, detailed above, read on patentably distinct vaccine composition comprising antibodies that specifically bind to a specific bacteria. Each antibody is patentably distinct because they have different biochemical and immunological properties and a further restriction is applied to each Group.

For Group V and Group VI, choose a single organism or specific combination.

1. Antibody that specifically binds to *Chlamydophila.*
2. Antibody that specifically binds to *S. zooepidemicus.*
3. Antibody that specifically binds to *M. cynos.*

For Group VIII, choose a single organism or specific combination.

1. Antibodies that specifically binds to CRCV.
2. Antibodies that specifically binds to CPIV.
3. Antibodies that specifically binds to CAV-2.
4. Antibodies that specifically binds to CHV.
5. Antibodies that specifically binds to *Bordetella bronchiseptic.*

Applicant is advised that examination will be restricted to only the elected vaccine composition comprising an antibody and should not be construed as a species election.

Sequence Election Requirement to Group V

In addition, Group V, detailed above, read on patentably distinct sequences. Each sequence is patentably distinct because they are structurally different and a further restriction is applied to each Group.

For Group V, choose single amino acid sequence (SEQ ID NO.) of the Chlamydophila species.

Applicant is advised that examination will be restricted to only the elected vaccine composition comprising an amino acid sequence and should not be construed as a species election.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions are not patentably distinct, applicant should submit evidence or identify such evidence now of record

showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103 (a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nina A. Archie whose telephone number is 571-272-9938. The examiner can normally be reached on Monday-Friday 8:30-5:00p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner supervisor, Jeffrey Siew can be reached on 571-272-0787. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nina Archie

Patent Examiner

GAU 1645

REM 3B31

MARK NAVARRO
PRIMARY EXAMINER